IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3920 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT NARMADA VALLEY FERTILIZERS CO. LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3920 of 1991

MR BH CHHATRAPATI for Petitioner No. 1

RULE SERVED for Respondents No. 1-2

MR NK MAJMUDAR for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 15/02/2002

ORAL JUDGEMENT

The present petition is preferred against the judgment and award dated 26.3.91 passed by the labour

court at Broach in Ref.Application No.90/91 whereby the labour court in purported exercise of powers has directed for reinstatement in service with 60% backwages.

2. Short facts leading to the present case are that the respondent workman was working as Probationary Khalasi with the petitioner. The respondent was originally employed as Peon and therefore he was posted as Khalasi on probation. It is the case of the petitioner that on 20.4.84 to 15.5.84 the respondent workman was on leave which was sanctioned. Thereafter from 14.5.84 to 30.6.84 the respondent workman remained absent without obtaining prior leave. It is further the case of the petitioner that on 27.5.84 a letter was sent to the respondent for resuming duty but it was not responded. Not only that but on 4.6.84 another letter was issued by the petitioner calling upon the respondent to resume duty by specifically pointing out the provisions of Cl.13(4) of the Industrial Employment (Standing Orders) Act, 1946. It is the case of the petitioner that though this letter was received by him, he did not actually resume duty. However, the contention of the respondent workman is that he himself made available for joining duty on 10.6.84 but he was not allowed to resume duty. It is also the contention of the respondent workman that on 11.5.84 he has submitted an application for grant of leave on the ground of death of his wife and he has requested that he shall resume duty on 7.6.84. Said letter is already produced in the compilation of this petition at annexure "D". Another aspect is that the letter dated 4.9.84 was issued by the respondent workman informing the Managing Director of the petitioner stating that as such he has no wife and due to mistake and without proper application of mind he had addressed the earlier letter. Thereafter the petitioner in exercise of powers under the Standing Orders terminated the services of the respondent workman by simply termination dated 30.6.84.

3. The respondent workman raised dispute against said termination which ultimately came to be referred to the Labour court for adjudication. The labour court considered the material and on internal page 17 of the award of the labour court it is interalia observed by the labour court that even if the action of the petitioner of terminating the services of the respondent workman is legal action as per the Standing Orders in purported exercise of powers which the employer company is having the termination is by way of penalty and the same is not just and reasonable. Thereafter, the labour court has considered the matter for the purpose of exercising

powers under section 11A of the Industrial Disputes Act and has observed that the action of dismissal from service (though it is a case of termination) is a misuse of power and the same is exercised without giving opportunity to the workman concerned and ultimately the labour court found that the action of termination is in breach of principles of natural justice. The labour court has further observed that since the workman has remained absent and has shown his negligence he will not be entitled to full backawages and therefore as per the reasoning of the labour court the workman would be entitled to 60% backwages. The labour court ultimately in the award has declared the action of the petitioner of terminating the services of the respondent is illegal and has directed the petitioner to reinstate the respondent workman in service with 60% backwages.

4. On behalf of the petitioner it is contended that once the Standing Order provided that there shall not be any lien on service on account of absence without obtaining prior leave and when the labour court has found that the action of termination is even legal thereafter the labour court ought not to have further exercised powers once the action was held to be in accordance with the Standing Order. It is also contended on behalf of the petitioner that the labour court has not considered that the respondent was in capacity of probationary Khalasi and the action is not that of dismissal. It is also contended on behalf of the petitioner that the labour court has exceeded in exercise of powers under section 11A of the Act by directing the reinstatement with 60% backwages.

5. Mr.Majmudar appearing for the respondent workman has contended that the judgment and award of the labour court is perfectly legal and valid and should not be interferred with.

6. As regards the first contention of the petitioner that a perusal of the Standing Order which is reproduced on page 4 of the petition shows that once the workman remains absent beyond the period of leave originally granted or subsequently extended shall be liable to lose lien on his appointment unless he returns within 8 days of expiry of that sanctioned leave and explain the circumstances under which he is unable to resume duty immediately on the expiry of his leave. Therefore a perusal of standing order shows that the workman concerned will lose his lien on his appointment and the labour court has not examined the legality and validity of the standing order but has rather accepted the standing order. Once legality and validity of the

standing order is accepted it would not be open to the labour court to examine as to whether the principles of natural justice were required to be followed when the labour court comes to conclusion that the action in accordance with the standing order. Therefore, Mr.Chhatrapati is right in his contention that once the labour court found that the action is in accordance with the Standing Order the matter could have rested there.

7. However, it is clear that even if the action is in accordance with the Standing Order, the labour court has power under section 11A to reappreciate the evidence and also to substitute the penalty. In the earlier matters, i.e. Ranjanaben A Chauhan vs Chimanlal R.Vaghri (Special Civil Application No.6489/01) decided on 7.2.2002 and Banco Products (India) ltd vs Pravinchandra Bhogilal Patel (Special Civil Application No.8140/01) decided on 19.2.2002 this very court has elaborately discussed the considerations which are required to be taken into account by the labour court while exercising powers under section 11A of the Act. Keeping in mind the said considerations, if we examine the facts of the present case, it is clear that the workman of his own admitted the guilt that his wife is not there and inspite of the same he has submitted to the authority showing the ground of death of his wife. Further aspect is that in the past there are number of cases of absenteeism against the workman. Not only that but the labour court has lost site of important aspect that the post on which the workman was working was that of a Khalasi and he was on probation. Considering the overall facts and circumstances of the case, I am of the view that the labour court has exceeded its jurisdiction in declaring the action of the petitioner of terminating the services of the workman as illegal and directing the reinstatement with 60% backwages. Since the workman was lastly working on the post of Khalasi that too on probation, in any case, he was not entitled to reinstatement on the post on which he was on probation. Further more, there is no reason why the petitioner employer should be saddled with the liability of any backwages when in the finding of the labour court it is the workman who has remained negligent in discharging his duties. However, prior to the posting of workman on the post of Khalasi he was working as a Peon. Considering overall facts and circumstances of the case, I am of the view that ends of justice would be met if the respondent workman is reinstated on the post of Peon without backwages.

7. In the result, petition is allowed to the extent that the judgment and award of the labour court dated

26.3.1991 is modified to the extent that instead of reinstatement in the original post the petitioner now will reinstate the respondent workman on the post of Peon with a clarification that he shall not be entitled to any backwages. Such reinstatement shall be made within a period of two months from the date of receipt of writ of this court. It is further made clear that under the interim orders, dated 17.6.91 passed by this court condition of 17B will continue to operate until the workman is reinstated on the post of Peon as indicated hereinabove. Rule is made absolute accordingly to the aforesaid extent. There shall be no order as to costs.

15.2.2002 (JAYANT PATEL,J)